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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3312 of 1990

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO
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ARVIND K JOSHI

Versus

M.N.SCIENCE & P.K.KOTAWALA ARTS COLEGE

Appearance:

MR KIRIT I PATEL for Petitioner
(MR PB MAJMUDAR) for Respondent No. 1
RULE SERVED for Respondent No. 2

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

Date of decision: 28/07/2000

ORAL JUDGEMENT

1. The petitioner was appointed as part-time Lecturer in Hindi in January 1983, by order dated 12-1-1983 in M.M. Science and Smt. P.K. Kothawala Arts College, Patan, District : Mehsana, affiliated at the relevant time to Gujarat University. Since 1983, the petitioner continued on the post of part time Lecturer in Hindi. The case of the petitioner is that the institution by force and pressure, obtained from him two letters of resignations dated 3-2-1989 (Ann. C) and 4-2-1989 (Ann E). On the basis of these resignation letters, he was relieved from his part-time job on 7-4-1989.

2. Aggrieved by his discharge from the post of part-time Lecturer in Hindi on the basis of forced resignations, the petitioner approached the Gujarat Affiliated Colleges Service Tribunal, which granted interim relief directing the College to continue him in service and not to act upon the resignation letters. That interim order was passed on 6-4-1989. The said order was not obeyed by the management and the petitioner was relieved from service on 7-4-1989 in terms of the alleged letters of his resignation.

3. The Gujarat Affiliated Colleges Service Tribunal, however, by the subsequent order dated 15-2-1990 (impugned in this petition) dismissed his case on the short ground that the College got affiliated to North Gujarat University and therefore, the Tribunal having jurisdiction only over the Affiliated Colleges of Gujarat University, had no jurisdiction to entertain his grievance.

4. In this Special Civil Application, on 23-4-1990, this Court directed the management not to appoint any person on the post of Lecturer in Hindi held by the petitioner, without the permission of the Court.

5. The management of the College moved a Civil Application No. 2025 of 1991 seeking permission to fill the post of Lecturer in Hindi which according the management was to be filled only from the reserved categories. On that Civil Application in Special Civil Application No. 3312 of 1990 on 8-9-92, the Court took cognizance of the fact stated on behalf of the management that the present petitioner had taken another employment as full time Lecturer under an order on 9-8-1991. This Court, therefore, in the order dated 8-9-92 vacated the interim relief earlier granted on 23-4-1990 and lifted the restraint on the management for filling on regular basis one post of Lecturer in Hindi from reserved category.

6. In this Special Civil Application, two reliefs were claimed, one of directing the management not to give effect to the resignation obtained from the petitioner by undue influence and force and the other relief claimed was his reinstatement on the post of part time Lecturer in Hindi.

7. Learned counsel Shri Kirit Patel appearing for the petitioner invites the attention of this Court to the definition of 'college employee' contained in Section 2(d) of the Gujarat Affiliated Colleges Services Tribunal

Act, 1982 and states that even a part time Lecturer is a member of the teaching staff.

8. The attention of the Court is also invited to the provisions of Section 15 of the Act of 1982 dealing with the subject of resignation by a 'college employee'. The said provision reads as under:

"Resignation of college employee.-If a college employee desires to submit his resignation, he shall tender the same in person to the Registrar of the relevant University and a resignation by college employee shall not be accepted by the manager of a college unless it is so tendered and forwarded to the manager by the Registrar duly endorsed. The acceptance of any resignation tendered in contravention of this section shall be ineffective."

9. On behalf of the petitioner, it is contended that a resignation tendered in person to the Registrar of the University to which the Institution is affiliated could alone be recognised and accepted after it is tendered to the Registrar and is forwarded by the Registrar to the Manager of the Institution. Provisions of Section 15 provides that acceptance of any resignation tendered in contravention of the Section shall be ineffective. On the basis of the provisions contained in Section 15 r.w. definition of 'college employee' contained in Section 2(d), learned counsel on behalf of the petitioner submits that the reliefs claimed by the petitioner in the petition should be granted.

10. On behalf of the College management the learned counsel who appeared earlier has been elevated to the Bench. This Court, therefore, issued notice on this application afresh to the management of the Institution which has been duly served through the Principal on 14-6-2000. No steps have been taken by the Management to engage another counsel. Mrs. Chowdary who is appearing for the respondent seeks time to take instructions from the management, but since the case is of the year 1990 in which the management has been served afresh in June 2000, this Court cannot show any further indulgence. After hearing the learned counsel for the petitioner, this Court finds that the relief of reinstatement in service in the same College cannot be granted for the simple reason that now the petitioner is employed elsewhere as a Full Time Lecturer from 1991. His only claim survives is of salary as part time Lecturer for the period between the date 7-4-1989 when the petitioner was forcibly

relieved on a forced resignation and the date he obtained another employment on 9-8-1991.

11. This Court finds that the management has acted in flagrant violation of the provisions of Section 15 of the Gujarat Affiliated Colleges Service Tribunal Act, 1982 and has deliberately refused to give effect to the interim order of the Tribunal. This Court, therefore, directs that the petitioner should be paid salary payable to him as part time Lecturer for the period between 7-4-1989 to 9-8-1991. He having secured another employment, the relief of reinstatement in service cannot be granted.

12. As a result of discussion aforesaid, this Special Civil Application partly succeeds to the extent indicated above. Rule is made absolute. Let the order of this Court be carried out within a reasonable period of four months. In the facts of the case, the petitioner shall also be entitled to costs from the management of the College (respondent no. 1) which is quantified at Rs. 1000/-.

(D.M. DHARMADHIKARI, C.J.)

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